

§ 1003.54

an application filed under this subpart shall send a copy of the comments, or a copy from which confidential information has been deleted in accordance with §1003.9(f), to the applicant. The person shall certify to the OHA that he has complied with the requirement of this paragraph. The OHA may notify other persons participating in the proceeding of such comments and provide an opportunity for such persons to respond.

§ 1003.54 Contents.

(a) The application shall contain a full and complete statement of all relevant facts pertaining to the circumstances, act or transaction that is the subject of the application and to the OHA action sought. Such facts shall include the names and addresses of all affected persons (if reasonably ascertainable), a complete statement of the business or other reasons that justify the act or transaction, a description of the acts or transactions that would be affected by the requested action, and a full description of the pertinent provisions and relevant facts contained in any relevant documents. Copies of all contracts, agreements, leases, instruments, and other documents relevant to the application shall be submitted to the OHA upon its request. A copy of the order of which modification or rescission is sought shall be included with the application.

(b) The applicant shall state whether he requests or intends to request that there be a conference regarding the application. Any request not made at the time the application is filed shall be made as soon thereafter as possible. The request and the OHA determination on the request shall be made in accordance with subpart F of this part.

(c) The applicant shall fully describe the events, acts, or transactions that comprise the significantly changed circumstances, as defined in §1003.55(b)(2), upon which the application is based. The applicant shall state why, if the significantly changed circumstance is new or newly discovered facts, such facts were not or could not have been presented during the process that led to the issuance of the order for which modification or rescission is sought.

10 CFR Ch. X (1–1–14 Edition)

(d) The application shall include a discussion of all relevant authorities, including, but not limited to, DOE rules, regulations, and decisions on appeal and exceptions relied upon to support the action sought therein.

§ 1003.55 OHA evaluation.

(a)(1) The OHA may initiate an investigation of any statement in an application and utilize in its evaluation any relevant facts obtained by such investigation. The OHA may solicit and accept submissions from third persons relevant to any application for modification or rescission provided that the applicant is afforded an opportunity to respond to all third person submissions. In evaluating an application for modification or rescission, the OHA may convene a conference, on its own initiative, if, in its discretion, it considers that such conference will advance its evaluation of the application.

(2) If the OHA determines that there is insufficient information upon which to base a decision and if upon request the necessary additional information is not submitted, the OHA may dismiss the application without prejudice. If the failure to supply additional information is repeated or willful, the OHA may dismiss the application with prejudice. If the applicant fails to provide the notice required by §1003.53, the OHA may dismiss the application without prejudice.

(b)(1) An application for modification or rescission of an order shall be processed only if—

(i) The application demonstrates that it is based on significantly changed circumstances; and

(ii) The period within which a person may file an appeal has lapsed or, if an appeal has been filed, a final order has been issued.

(2) For purposes of this subpart, the term “significantly changed circumstances” shall mean—

(i) The discovery of material facts that were not known or could not have been known at the time of the proceeding and action upon which the application is based;

(ii) The discovery of a law, rule, regulation, order or decision on appeal or exception that was in effect at the time

Department of Energy

§ 1003.62

of the proceeding upon which the application is based and which, if such had been made known to the OHA, would have been relevant to the proceeding and would have substantially altered the outcome; or

(iii) There has been a substantial change in the facts or circumstances upon which an outstanding and continuing order of the OHA affecting the applicant was issued, which change has occurred during the interval between issuance of such order and the date of the application and was caused by forces or circumstances beyond the control of the applicant.

§ 1003.56 Decision and Order.

(a) Upon consideration of the application and other relevant information received or obtained during the proceeding, the OHA shall issue a Decision and Order granting or denying the application.

(b) The Decision and Order shall include a written statement setting forth the relevant facts and the legal basis of the Decision and Order. When appropriate, the Decision and Order shall state that it is a final order of which the applicant may seek judicial review.

(c) The OHA shall serve a copy of the Decision and Order upon the applicant, any other person who participated in the proceeding and upon any other person readily identifiable by the OHA as one who is aggrieved by such Decision and Order.

Subpart F—Conferences and Hearings

§ 1003.60 Purpose and scope.

This subpart establishes the procedures for requesting and conducting an OHA conference or hearing. Such proceedings shall be convened in the discretion of the OHA, consistent with OHA requirements.

§ 1003.61 Conferences.

(a) The OHA in its discretion may direct that a conference be convened, on its own initiative or upon request by a person, when it appears that such conference will materially advance the proceeding. The determination as to who may attend a conference convened under this subpart shall be in the dis-

cretion of the OHA, but a conference will usually not be open to the public.

(b) A conference may be requested in connection with any proceeding of the OHA by any person who would be aggrieved by that proceeding. The request may be made in writing or verbally, but must include a specific showing as to why such conference will materially advance the proceeding. The request shall be addressed to the OHA, as provided in § 1003.11.

(c) A conference may only be convened after actual notice of the time, place and nature of the conference is provided to the person who requested the conference.

(d) When a conference is convened in accordance with this section, each person may present views as to the issues involved. Documentary evidence may be presented at the conference, but will be treated as if submitted in the regular course of the proceeding. A transcript of the conference will not usually be prepared. However, the OHA in its discretion may have a verbatim transcript prepared.

(e) Because a conference is solely for the exchange of views incident to a proceeding, there will be no formal reports or findings unless the OHA in its discretion determines that such would be advisable.

§ 1003.62 Hearings.

(a) The OHA in its discretion may direct that a hearing be convened on its own initiative or upon request by a person, when it appears that such hearing will materially advance the proceeding. All hearings convened pursuant to this subpart shall be conducted by the Director of the OHA or his designee. The determination as to who may attend a hearing convened under this subpart shall be in the discretion of OHA. Hearings will be open to the public, but may be closed at the discretion of OHA if the reason is put in the record.

(b) A hearing may be requested by an applicant, appellant, or any other person who would be aggrieved by the OHA action sought. The request shall be in writing and shall include a specific showing as to why such hearing will materially advance the proceeding. The request shall be addressed